

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KEVIN POPE,

Plaintiff,

v.

JACK PALMER, et al.,

Defendant.

Case No. 3:13-cv-00357-MMD-VPC

ORDER

This prisoner civil rights action comes before the Court on plaintiff's motion for an extension of time to file an amended complaint (dkt. no. 7) and his later notice of voluntary dismissal (dkt. no. 8).

Plaintiff's notice of dismissal seeks to dismiss the action without prejudice "to refile at such time as he is able to file the amended complaint." Plaintiff may not condition a dismissal in this manner. He may unconditionally dismiss an action, and he may do so without prejudice if he has not previously dismissed a state or federal action based on or including the same claim(s). However, a dismissal conditioned upon an ability to refile an amended complaint in the same action is not an unconditional dismissal. Nor, in truth, is it a dismissal of the action at all.


The Court will give plaintiff an additional opportunity to either file an amended complaint or seek other relief. If plaintiff does not amend or otherwise respond within the time allowed, the present action will be dismissed without prejudice. If plaintiff thereafter wishes to pursue the claims, he will have to file a new action under a new

1 docket number. The Court expresses no opinion as to how the statute of limitations
2 might apply to a later-filed action.

3 Even allowing for limited access to resources at the institution, plaintiff will have
4 had ample time to file an amended complaint by the end of the extended period allowed
5 herein. If he does not do so within the extension allowed, the action will be dismissed
6 without prejudice.

7 It is therefore ordered that plaintiff's motion for an extension of time (dkt. no. 7) is
8 granted such that plaintiff shall have thirty (30) days from entry of this order within which
9 to file an amended complaint. If plaintiff does not file an amended complaint within the
10 extended period allowed, the action will be dismissed without prejudice by a final
11 judgment without further advance notice.

12 DATED THIS 1st day of October 2013.

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15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
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